

USSN 09/215,095

REMARKS

Claims 66-69, 72-76, 78-107 are pending. Applicants filed an appeal brief on January 23, 2004. The Examiner withdrew the finality of the Office action mailed on April 30, 2003 in order to add a new ground of rejection, namely double patenting based on the judicially created nonstatutory doctrine.

The Examiner is thanked for the telephone conference on or about April 6, 2004, clarifying that a response offering to submit a terminal disclaimer when allowable subject matter is identified would be sufficient. A record of the telephone conference is submitted herewith.

Applicants will submit a terminal disclaimer upon receipt of notification of allowable subject matter.

Applicants also submit herewith claim amendments with this response. Applicants observed that their appeal brief inadvertently did not identify the status of all of the claims. This oversight is corrected by this amendment. Additionally, Applicants have further amended claims 66, 67, 73, 76, 78, 79, 82, 83, 84, 99, 100, 104, 105, 106, 107. Claim 108 is added.

Claim 66 is amended to ensure that there are no issues with proper antecedent basis by changing "the layers" in line 1 to "layers of the layered granule"; and to change in b) "an outer barrier layer" to "a barrier layer" and "coating" to "coating layer". This amendment to b) is not made to overcome prior art, but to conform the claim language to the language of the specification on page 9, line 20 and lines 27-28. Applicants further amended claim 66 for clarity and to remove language which might be construed as process steps. Specifically, the matrix is amended to a "mixture of a protein solution or slurry and a solution which is a combination of a sugar or sugar alcohol and a polysaccharide structuring agent". The amendment is supported at least on page 6, lines 7-9 and is made for purposes of clarity and not to overcome prior art.

The amendment to dependent claim 67 is made solely for the purpose antecedent basis in view of the amendments to claim 66.

Dependent Claim 73 is amended for the sole purpose of adding "structuring agent" to conform to the original language of parent claim 66.

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Dependent claim 76 is amended for the sole purpose of conforming the language to parent claim 66, namely adding "solution of a" prior to "sugar" and adding the polysaccharide structuring agent as in claim 66. Dependent claim 78 is amended for the sole purpose of changing "coating layered" to "coating layer" as in parent claim 66. Dependent Claim 79 is amended for the sole purpose of changing coating" to "coating layer" as in parent claim 66 and to correct a typographical error by changing in line 2 "derivative" to "derivatives" as on page 10, line 7 of the specification. Depending claim 82 is amended to clarify that the synthetic polymer is added to the protein matrix. This amendment is supported in the specification on page 9, lines 9-12.

Independent claim 83 is amended on line 2 in the interests of correct antecedent basis by deleting " layers" and inserting "granule". As in claim 66, claim 83 is further amended to ensure that process language is not an issue with the claim and to add that the sugar and polysaccharide structuring agent is as "aqueous solution". This language is supported at least in the Examples, for instance, at page 13, line 7. Applicants also amended b) for correct antecedent basis, as explained in connection with the amendment to b) in claim 66. Dependent claims 84, 99, 100, 104, and 105 are amended to conform to use of "coating layer" and/or "barrier layer" in parent claim 83. Claim 100 also was amended to change "protein layer" to "enzyme matrix" to correct antecedent basis.

Independent claim 106, specifically b), is amended to change "matrix layered" to "matrix layer" for clarity and to add that the combination of a sugar and at least one polysaccharide structuring agent is a "solution", as discussed above. "the enzyme matrix layer" also was added to line 3 of b) to clarify that this layer constitutes 20-80% by weight of the granule. Dependent claim 107 is amended to change "barrier salt" to "barrier salt layer" for correct antecedent basis.

Independent Claim 108 is added to claim the matrix as an "admixture" as supported at least on page 7, line 1.

Applicants respectfully request admission of the amendments which do not add matter and better position the case for the pending appeal.

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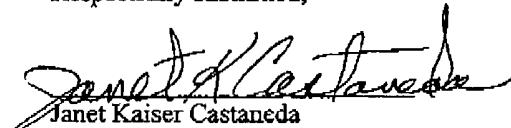
35 USC § 103 Rejections

Applicants hereby incorporate herein their arguments from their Appeal Brief with regard to the § 103 rejections.

The Examiner is invited to telephone the undersigned if there are questions or comments regarding this amendment.

Respectfully submitted,

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